

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MONSANTO COMPANY and THE  
NUTRASWEET COMPANY,

Plaintiffs,

-against-

VICTORY WHOLESALE GROCERS, et al.

Defendants.

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**ORDER**

Misc. Case. No 08-MC-134

**HURLEY, Senior District Judge:**

This miscellaneous case number was opened solely to address a motion by Victory Wholesale Grocers (“Victory”) to quash a subpoena issued out of the Eastern District of New York. The subpoena was issued by Monsanto in connection with its prosecution of a lawsuit pending in the United States District Court for the Southern District of Ohio entitled Monsanto Company v. Victory Wholesale Grocers, C-1-99-371. The subpoena was addressed to non-party, law firm Kramer, Levin Naftalis & Frankel, LLP, located in New York. In general, the subpoena sought the production of transcripts of depositions which were taken in yet another, separate action pending in this court entitled Proctor & Gamble Co., Inc., v. Xetal, Inc., CV 04-2820 (E.D.N.Y., filed July 4, 2004) ( the “Xetal Action”). Kramer Levin represents Proctor & Gamble in the Xetal action and Victory was a defendant therein until January 2007.

By Order dated May 14, 2008, Magistrate Judge Wall (1) granted the motion of Victory Wholesale Grocers (“Victory”) to quash the subpoena on the ground that the subpoena was facially invalid under Fed. R. Civ. P. 45; and (2) construed Monsanto’s opposition to the motion to quash as a cross-motion to allow Monsanto to seek by valid subpoena, documents previously designated as confidential pursuant to a Confidentiality Order in effect in the Xetal Action and

granted that cross-motion as well. An appeal was filed and, by Order dated July 7, 2008, this Court affirmed Judge Wall's Order. The Clerk of Court entered judgment on July 7, 2008 and closed this case.

Presently before this Court is a motion by Cem Ozdemir, Lillo Brancato, and Jonathan Lee Riches to intervene in this miscellaneous action or, in the alternative to file an amicus curiae brief claiming they "have a vested interest in this case to support Monsanto's claims," "bring questions of laws[sic] and facts that are common in this action," and "have documents, exhibits and discovery materials related to this case." The motion is denied.

As evidenced by the background facts recited above, no substantive causes of action are involved in this miscellaneous proceeding. This miscellaneous action was opened solely to address the motion to quash the subpoena issued by Monsanto. That motion has been decided and this miscellaneous action has been closed.

The Clerk of Court is directed to serve a copy of this Order on the proposed intervenors.

**SO ORDERED.**

Dated: Central Islip, New York  
November 26, 2008

/s/ \_\_\_\_\_  
Denis R. Hurley  
Senior District Judge